

AN ORDINANCE 2006-04-20-0499

AUTHORIZING A SETTLEMENT IN THE AMOUNT OF \$148,930.00 TO BE RECEIVED BY THE CITY FROM GRANDE COMMUNICATIONS, INC. FOR OUTSTANDING OBLIGATIONS PRIOR TO THE TERMINATION OF ITS CABLE FRANCHISE AGREEMENT WITH THE CITY OF SAN ANTONIO.

* * * * *

WHEREAS, on May 18, 2000, the City approved a cable franchise agreement with Grande Communications, Inc. ("Grande") ("Grande Franchise Agreement") to allow Grande to utilize the City's public rights-of-way for the purpose of constructing, maintaining, and operating a cable system and broadband telecommunications network; and

WHEREAS, among other provisions, the Grande Franchise Agreement provided a timeline for construction of a citywide network build out prepayment of municipal franchise fees, monetary contributions for the funding of public, educational, and governmental ("PEG") access channels, and a security deposit; and

WHEREAS, pursuant to Chapter 66 of the Texas Utilities Code, entitled "State-Issued Cable and Video Franchise," on October 25, 2005, the Texas Public Utility Commission granted Grande a state-issued certificate of authority to provide cable services in San Antonio superceding the Grande Franchise Agreement effective on that date; and

WHEREAS, except as otherwise provided in Chapter 66, Section 66.004(f) of the Texas Utilities Code does not abrogate, nullify, or adversely affect in any way the contractual rights, duties, or obligations existing and incurred by a cable service provider before the enactment of Chapter 66, including the build out, PEG monetary contribution, and penalty provisions in the Grande Franchise Agreement; and

WHEREAS, pursuant to Section 66.004(c) of the Texas Utilities Code, Grande is required to remit unpaid franchise fees to the City within 90 days of termination of the Grande Franchise Agreement; and

WHEREAS, upon termination of the Grande Franchise Agreement on October 25, 2005, Grande and the City disagreed on the amount of monetary compensation Grande owed the City as final payment under the Grande Franchise Agreement; and

WHEREAS, Grande and the City have been engaged in negotiations in an attempt to reach an amicable resolution to this matter, and in order to avoid the cost and risk of litigation, and other valuable consideration, the City and Grande have agreed to settle their differences pursuant to the terms in a settlement agreement; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Settlement Agreement between the City of San Antonio and Grande Communications, Inc. ("Settlement Agreement"), under which the City will receive \$148,930.02, are hereby authorized. The Settlement Agreement, executed by Grande, is attached hereto and made a part of this Ordinance as Exhibit "A." A copy of the fully executed Settlement Agreement will be attached to this Ordinance and will replace Exhibit "A."

SECTION 2. Upon execution of the Settlement Agreement by the City, Grande will make payment to the City under the terms of said Settlement Agreement. The fees generated by this Ordinance should be deposited into Fund 11001000, General Fund, Internal Order 21800000000084 "Grande Cable Franchise Fee," General Ledger 4103110 Taxes - Cablevision Franchise Taxes.

SECTION 3. The funds of \$148,930.00 are appropriated to Fund 1100100, General Fund, Cost Center 120301001, Pub Edu Gov Channel, General Ledger 5501055, Capital Outlay <5000 - Mach & Equip Other.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. The City Attorney is hereby authorized for a period of ninety (90) days from the effective date of this Ordinance to execute any and all documents necessary to fulfill the purpose and intent of this Ordinance.

SECTION 6. This Ordinance shall become effective immediately upon the passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10th) day after passage.

PASSED AND APPROVED this 20th day of April 2006.


M A Y O R

PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:

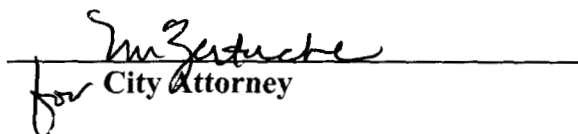

for City Attorney

EXHIBIT A

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF SAN
ANTONIO AND GRANDE COMMUNICATIONS, INC.**

STATE OF TEXAS

COUNTY OF BEXAR

§
§
§

THIS SETTLEMENT AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2006 and Grande Communications, Inc. ("Grande") both of which may be referred to herein collectively as the "Parties" or separately as "Party."

RECITALS

A. WHEREAS, on May 18, 2000, the City approved a cable franchise agreement with Grande ("Grande Franchise Agreement") to allow Grande to utilize the City's public rights-of-way ("ROW") for the purpose of constructing, maintaining, and operating a cable system and broadband telecommunications network.

B. WHEREAS, among other provisions, the Grande Franchise Agreement provided for a citywide network buildout to be constructed within a certain timeline; prepayment of municipal franchise fees; monetary contributions for the funding of public, educational, and governmental ("PEG") access channels; and a security deposit.

C. WHEREAS, on September 7, 2005, the Texas Governor signed Senate Bill 5 ("S.B.5"), which became effective immediately. Section 27 of S.B.5 enacted Chapter 66 of the Texas Utilities Code, entitled "State-Issued Cable and Video Franchise."

D. WHEREAS, pursuant to Section 66.004(b) of the Texas Utilities Code, a non-incumbent cable service provider serving fewer than 40 percent of the total cable customers in a particular municipal franchise area may elect to terminate that municipal franchise and seek a state-issued certificate of franchise authority from the Public Utility Commission of Texas ("Commission").

E. WHEREAS, on October 25, 2005, the Commission granted Grande a state-issued certificate to provide cable service in San Antonio, Texas, and pursuant to Section 66.004(c) of the Texas Utilities Code the Grande Franchise Agreement terminated on that date.

F. WHEREAS, pursuant to Section 66.004(c) of the Texas Utilities Code, within 90 days of termination of the municipal franchise agreement a holder of a state-issued certificate of authority must remit unpaid franchise fees to the city.

G. WHEREAS, except as otherwise provided in Chapter 66, Section 66.004(f) of the Texas Utilities Code does not abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider before the enactment of the Chapter 66, including provisions in the Grande Franchise Agreement.

H. WHEREAS, on the date of the termination of the Grande Franchise Agreement, the City held funds provided under the Grande Franchise Agreement in the estimated amount of \$181,009.42 consisting of: (1) \$100,000.00 security deposit; (2) \$50,487.48 representing the balance on the original \$1,000,000.00 prepayment of franchise fees made by Grande; and (3) \$30,521.95 in interest on the prepayment remaining balance.

I. WHEREAS, on or about December 27, 2005, Grande demanded the return of its \$100,000.00 security deposit, plus any accrued interest, as well as the return of a surety bond instrument required under Section 21(k) of the Grande Franchise Agreement, which was cancelled by Grande effective October 26, 2005.

J. WHEREAS, Grande and the City disagree on the amount of funds that Grande owes the City as final payment under the Grande Franchise Agreement, which positions have been outlined in demand letters between the Parties and other communication exchanges. The Parties have been engaged in negotiation discussions in an attempt to reach an amicable resolution to this matter.

NOW, THEREFORE, in order to avoid the cost and risk of litigation, and other valuable consideration, City and Grande agree to settle their differences pursuant to the following terms and conditions:

1. Payment to City. Upon the Effective Date of this Settlement Agreement, Grande agrees to pay the City the amount of ONE HUNDRED FORTY EIGHT THOUSAND NINE HUNDRED THIRTY AND 02/100 DOLLARS (\$148,930.02) to be recognized in the following manner:
 - a. The City will keep Grande's \$100,000.00 security deposit.
 - b. The City will keep interest in the amount of \$30,521.95 associated to Grande's prepayment.
 - c. Grande will write a check payable to the City in the amount of \$18,408.07.
2. No Hearing on Penalties. The City agrees not to conduct a public hearing on penalties and liquidated damages pursuant to Sections 27(b) and 17(a-1) of the Grande Franchise Agreement.
3. Return of Surety Bond. The City will return to Grande the surety bond instrument that was required by Section 21(k) of the Grande Franchise Agreement in the amount of \$500,000.00 and identified as CHUBB Bond #8303-42-26.
4. City Right to Audit. The City will have the right to conduct a final audit of Grande's payment compliance under the Grande Franchise Agreement and seek redress of any potential noncompliance issues as provided for in said agreement.
5. Release of Claims by Grande. Grande hereby releases any and all claims, rights demands, debts, liabilities, controversies and causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, accrued or unaccrued, of any nature whatsoever, whether founding in tort, contract, statute or common law, or any other theory of liability, against the City under the Grande Franchise Agreement.
6. Release of Claims by City. Except as provided otherwise in paragraph 4, the City, hereby releases any and all claims, rights demands, debts, liabilities, controversies and causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, accrued or unaccrued, of any nature whatsoever, whether founding in tort, contract, statute or common law, or any other theory of liability,

against the Grande for unpaid fees under the Grande Franchise Agreement.

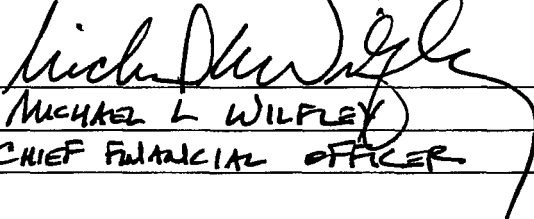
7. No Admission of Liability. It is expressly understood and agreed that this is a compromise of disputed claims, and that nothing contained herein shall be construed or interpreted as an admission of liability by Grande or the City under the Grande Franchise Agreement.
8. No Reliance on Implied Representations. This Settlement Agreement has been prepared by the joint efforts of the respective attorneys for the City and Grande. The City and Grande represent, covenant and warrant that they or their duly authorized representatives have read this Settlement Agreement and fully understand it; that they have executed this Settlement Agreement with the intent to be fully bound according to its terms; that in signing this Settlement Agreement, they have relied solely on their own knowledge or their duly authorized representatives' knowledge and judgment and/or advice of their attorneys and not in reliance on any representation, warranty, advice, statement or action of any kind of the other Party, except to the extent such representations, warranties, advice, statements, or actions are expressly set forth in this Settlement Agreement. The Parties expressly disclaim reliance on any fact or representation made by the other if not expressly contained in this Settlement Agreement.
9. Entire Settlement Agreement. This Settlement Agreement set forth the entire agreement and understanding between the Parties as to the subject matter hereof and supersedes all previous agreements and discussions between the Parties as to the matters herein addressed. No Party shall be bound by any representation with respect to the subject matter of this Settlement Agreement other than as expressly set forth herein.
10. Waiver. Failure on the part of either Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
11. Binding Effect. This Settlement Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

12. Authority. The undersigned officer and/or agent of Grande are an authorized representative with full authority to bind the Grande to the terms and conditions of this Settlement Agreement and have the necessary authority to execute this Settlement Agreement on behalf of Grande.

13. Governing Law. This Settlement Agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Settlement Agreement shall be heard and determined in Bexar County, Texas.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Settlement Agreement and made the same effective as of the Effective Date.

GRANDE COMMUNICATIONS, INC.

By: 
Name: MICHAEL L. WILFLEY
Title: CHIEF FINANCIAL OFFICER

CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____

Approved as to Form:

City Attorney